

109TH CONGRESS  
1ST SESSION

# S. 1229

To amend the Internal Revenue Code of 1986 to extend, modify, and expand the credit for electricity produced from renewable resources and waste products, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JUNE 13, 2005

Mr. REID (for himself, Mrs. FEINSTEIN, Ms. CANTWELL, Ms. SNOWE, Mr. JEFFORDS, Mr. LIEBERMAN, and Mr. KERRY) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Internal Revenue Code of 1986 to extend, modify, and expand the credit for electricity produced from renewable resources and waste products, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Renewable Energy Incentives Act”.

6 (b) AMENDMENT OF 1986 CODE.—Except as other-  
7 wise expressly provided, whenever in this Act an amend-  
8 ment or repeal is expressed in terms of an amendment

1 to, or repeal of, a section or other provision, the reference  
 2 shall be considered to be made to a section or other provi-  
 3 sion of the Internal Revenue Code of 1986.

4 **SEC. 2. EXTENSION, MODIFICATION, AND EXPANSION OF**  
 5 **CREDIT FOR ELECTRICITY PRODUCED FROM**  
 6 **RENEWABLE RESOURCES AND WASTE PROD-**  
 7 **UCTS.**

8 (a) PERMANENT EXTENSION.—

9 (1) Paragraphs (1) and (2)(A)(i) of section  
 10 45(d) are each amended by striking “, and before  
 11 January 1, 2006”.

12 (2) Section 45(d)(2)(A)(ii) is amended by strik-  
 13 ing “before January 1, 2006, is originally placed in  
 14 service and” and insert “is”.

15 (3) Section 45(d)(3)(A) is amended—

16 (A) by striking “owned by the taxpayer”,

17 (B) by inserting “owned by the taxpayer  
 18 and” in clause (i)(I) after “is”,

19 (C) by striking “and before January 1,  
 20 2006” in clause (i)(I), and

21 (D) by striking “originally placed in serv-  
 22 ice before January 1, 2006” in clause (ii) and  
 23 inserting “owned by the taxpayer”.

24 (4) Paragraphs (4), (5), (6), and (7) of section  
 25 45(d) (relating to qualified facilities) are amended

1 by striking “and before January 1, 2006” each place  
 2 it appears.

3 (b) CREDIT RATE.—

4 (1) INCREASE IN CREDIT RATE.—

5 (A) IN GENERAL.—Section 45(a)(1) is  
 6 amended by striking “1.5 cents” and inserting  
 7 “1.9 cents”.

8 (B) CONFORMING AMENDMENTS.—

9 (i) Section 45(b)(2) is amended by  
 10 striking “1.5 cent” and inserting “1.9  
 11 cent”.

12 (ii) Section 45(e)(2)(B) is amended by  
 13 inserting “(calendar year 2004 in the case  
 14 of the 1.9 cent amount in subsection (a))”  
 15 after “1992”.

16 (2) FULL CREDIT RATE FOR ALL FACILITIES  
 17 PLACED IN SERVICE AFTER DATE OF ENACTMENT.—

18 Section 45(b)(4)(A) (relating to credit rate) is  
 19 amended by inserting “and placed in service before  
 20 the date of the enactment of the Renewable Energy  
 21 Incentives Act” after “subsection (d)”.

22 (c) FULL CREDIT PERIOD FOR ALL FACILITIES  
 23 PLACED IN SERVICE AFTER DATE OF ENACTMENT.—Sec-  
 24 tion 45(b)(4)(B)(i) (relating to credit period) is amended  
 25 by inserting “and placed in service before the date of the

1 enactment of the Renewable Energy Incentives Act” after  
 2 “subsection (d)”

3 (d) EXPANSION OF QUALIFIED RESOURCES.—

4 (1) IN GENERAL.—Section 45(c)(1) (defining  
 5 qualified energy resources) is amended by striking  
 6 “and” at the end of subparagraph (F), by striking  
 7 the period at the end of subparagraph (G) and in-  
 8 serting a comma, and by adding at the end the fol-  
 9 lowing new subparagraphs:

10 “(H) incremental geothermal energy pro-  
 11 duction, and

12 “(I) incremental hydropower production.”.

13 (2) DEFINITION OF RESOURCES.—Section 45(c)  
 14 (relating to qualified energy resources and refined  
 15 coal) is amended by adding at the end the following  
 16 new paragraphs:

17 “(8) INCREMENTAL GEOTHERMAL PRODUC-  
 18 TION.—

19 “(A) IN GENERAL.—The term ‘incremental  
 20 geothermal production’ means for any taxable  
 21 year the excess of—

22 “(i) the total kilowatt hours of elec-  
 23 tricity produced from an incremental geo-  
 24 thermal facility described in subsection  
 25 (d)(9), over

“(ii) the average annual kilowatt hours produced at such facility for 5 of the previous 7 calendar years before the date of the enactment of this paragraph after eliminating the highest and the lowest kilowatt hour production years in such 7-year period.

“(B) SPECIAL RULE.—A facility described in subsection (d)(9) which was placed in service at least 7 years before the date of the enactment of this paragraph shall commencing with the year in which such date of enactment occurs, reduce the amount calculated under subparagraph (A)(ii) each year, on a cumulative basis, by the average percentage decrease in the annual kilowatt hour production for the 7-year period described in subparagraph (A)(ii) with such cumulative sum not to exceed 30 percent.

“(9) INCREMENTAL HYDROPOWER PRODUCTION.—

“(A) IN GENERAL.—The term ‘incremental hydropower production’ means for any taxable year an amount equal to the percentage of total kilowatt hours of electricity produced from an incremental hydropower facility described in

subsection (d)(10) attributable to efficiency improvements or additions of capacity as determined under subparagraph (B).

“(B) DETERMINATION OF INCREMENTAL HYDROPOWER PRODUCTION.—For purposes of subparagraph (A), incremental hydropower production for any incremental hydropower facility for any taxable year shall be determined by establishing a percentage of average annual hydropower production at the facility attributable to the efficiency improvements or additions of capacity using the same water flow information used to determine an historic average annual hydropower production baseline for such facility. Such percentage and baseline shall be certified by the Federal Energy Regulatory Commission. For purposes of the preceding sentence, the determination of incremental hydropower production shall not be based on any operational changes at such facility not directly associated with the efficiency improvements or additions of capacity.”.

(3) FACILITIES.—Section 45(d) (relating to qualified facilities) is amended by adding at the end the following new paragraphs:

1 “(9) INCREMENTAL GEOTHERMAL FACILITY.—

2 In the case of a facility using incremental geo-  
 3 thermal to produce electricity, the term ‘qualified fa-  
 4 cility’ means any facility owned by the taxpayer  
 5 which is originally placed in service before the date  
 6 of the enactment of this paragraph, but only to the  
 7 extent of its incremental geothermal production. In  
 8 the case of a qualified facility described in the pre-  
 9 ceding sentence, the 10-year period referred to in  
 10 subsection (a) shall be treated as beginning not ear-  
 11 lier than such date of enactment. Such term shall  
 12 not include any property described in section  
 13 48(a)(3) the basis of which is taken into account by  
 14 the taxpayer for purposes of determining the energy  
 15 credit under section 48.

16 “(10) INCREMENTAL HYDROPOWER FACIL-  
 17 ITY.—In the case of a facility using incremental hy-  
 18 dropower to produce electricity, the term ‘qualified  
 19 facility’ means any non-Federal hydroelectric facility  
 20 owned by the taxpayer which is originally placed in  
 21 service before the date of the enactment of this  
 22 paragraph, but only to the extent of its incremental  
 23 hydropower production. In the case of a qualified fa-  
 24 cility described in the preceding sentence, the 10-  
 25 year period referred to in subsection (a) shall be

1       treated as beginning not earlier than such date of  
2       enactment.”.

3       (e) CREDIT ELIGIBILITY FOR LESSEES AND OPERA-  
4       TORS EXTENDED TO ALL FACILITIES.—Paragraph (6) of  
5       section 45(d) is amended to read as follows:

6               “(6) CREDIT ELIGIBILITY FOR LESSEES AND  
7       OPERATORS.—In the case of any facility described in  
8       paragraph (1), (4), (5), (6), (7), (9), or (10), if the  
9       owner of such facility is not the producer of the elec-  
10      tricity, the person eligible for the credit allowable  
11      under subsection (a) shall be the lessee or the oper-  
12      ator of such facility.”.

13      (f) QUALIFIED FACILITIES WITH CO-PRODUCTION.—  
14      Section 45(b) (relating to limitations and adjustments) is  
15      amended by adding at the end the following:

16              “(5) INCREASED CREDIT FOR CO-PRODUCTION  
17      FACILITIES.—

18              “(A) IN GENERAL.—In the case of a quali-  
19      fied facility described in any paragraph of sub-  
20      section (d) (other than paragraph (8)) which  
21      adds a co-production facility after the date of  
22      the enactment of this paragraph, the amount in  
23      effect under subsection (a)(1) for an eligible  
24      taxable year of a taxpayer shall (after adjust-  
25      ment under paragraph (2) and before adjust-



1           ment under paragraphs (1) and (3)) be in-  
2           creased by .25 cents.

3           “(B) CO-PRODUCTION FACILITY.—For  
4           purposes of subparagraph (A), the term ‘co-pro-  
5           duction facility’ means a facility which—

6                   “(i) enables a qualified facility to  
7                   produce heat, mechanical power, chemicals,  
8                   liquid fuels, or minerals from qualified en-  
9                   ergy resources in addition to electricity,  
10                  and

11                  “(ii) produces such energy on a con-  
12                  tinuous basis.

13           “(C) ELIGIBLE TAXABLE YEAR.—For pur-  
14           poses of subparagraph (A), the term ‘eligible  
15           taxable year’ means any taxable year in which  
16           the amount of gross receipts attributable to the  
17           co-production facility of a qualified facility are  
18           at least 10 percent of the amount of gross re-  
19           ceipts attributable to electricity produced by  
20           such facility.”.

21           (g) QUALIFIED FACILITIES LOCATED WITHIN  
22           QUALIFIED INDIAN LANDS.—Section 45(b) (relating to  
23           limitations and adjustments), as amended by subsection  
24           (f), is amended by adding at the end the following:

1           “(6) INCREASED CREDIT FOR QUALIFIED FA-  
 2           CILITY LOCATED WITHIN QUALIFIED INDIAN  
 3           LAND.—In the case of a qualified facility described  
 4           in any paragraph of subsection (d) (other than para-  
 5           graphs (1), (2) and (8)) which—

6                   “(A) is located within—

7                           “(i) qualified Indian lands (as defined  
 8                           in section 7871(c)(3)), or

9                           “(ii) lands which are held in trust by  
 10                           a Native Corporation (as defined in section  
 11                           3(m) of the Alaska Native Claims Settle-  
 12                           ment Act (43 U.S.C. 1602(m)) for Alaska  
 13                           Natives, and

14                   “(B) is operated with the explicit written  
 15                   approval of the Indian tribal government or Na-  
 16                   tive Corporation (as so defined) having jurisdic-  
 17                   tion over such lands, the amount in effect under  
 18                   subsection (a)(1) for a taxable year shall (after  
 19                   adjustment under paragraphs (2) and (5) and  
 20                   before adjustment under paragraphs (1) and  
 21                   (3)) be increased by .25 cents.”.

22           (h) ADDITIONAL MODIFICATIONS.—

23                   (1) TREATMENT OF PERSONS NOT ABLE TO  
 24                   USE ENTIRE CREDIT.—Section 45(e) (relating to ad-  
 25                   ditional definitions and special rules), as amended by

1 subsection (a)(2), is amended by adding at the end  
 2 the following new paragraph:

3 “(11) TREATMENT OF PERSONS NOT ABLE TO  
 4 USE ENTIRE CREDIT.—

5 “(A) ALLOWANCE OF CREDIT.—

6 “(i) IN GENERAL.—Except as other-  
 7 wise provided in this subsection—

8 “(I) any credit allowable under  
 9 subsection (a) with respect to a quali-  
 10 fied facility owned by a person de-  
 11 scribed in clause (ii) may be trans-  
 12 ferred or used as provided in this  
 13 paragraph, and

14 “(II) the determination as to  
 15 whether the credit is allowable shall  
 16 be made without regard to the tax-ex-  
 17 empt status of the person.

18 “(ii) PERSONS DESCRIBED.—A person  
 19 is described in this clause if the person  
 20 is—

21 “(I) an organization described in  
 22 section 501(c)(12)(C) and exempt  
 23 from tax under section 501(a),

24 “(II) an organization described  
 25 in section 1381(a)(2)(C),

1 “(III) a public utility (as defined  
 2 in section 136(c)(2)(B)), which is ex-  
 3 empt from income tax under this sub-  
 4 title,

5 “(IV) any State or political sub-  
 6 division thereof, the District of Co-  
 7 lumbia, any possession of the United  
 8 States, or any agency or instrumen-  
 9 tality of any of the foregoing, or

10 “(V) any Indian tribal govern-  
 11 ment (within the meaning of section  
 12 7871) or any agency or instrumen-  
 13 tality thereof.

14 “(B) TRANSFER OF CREDIT.—

15 “(i) IN GENERAL.—A person de-  
 16 scribed in subparagraph (A)(ii) may trans-  
 17 fer any credit to which subparagraph  
 18 (A)(i) applies through an assignment to  
 19 any other person not described in subpara-  
 20 graph (A)(ii). Such transfer may be re-  
 21 voked only with the consent of the Sec-  
 22 retary.

23 “(ii) REGULATIONS.—The Secretary  
 24 shall prescribe such regulations as nec-  
 25 essary to ensure that any credit described

in clause (i) is assigned once and not reas-  
signed by such other person.

“(iii) TRANSFER PROCEEDS TREATED  
AS ARISING FROM ESSENTIAL GOVERN-  
MENT FUNCTION.—Any proceeds derived  
by a person described in subclause (III),  
(IV), or (V) of subparagraph (A)(ii) from  
the transfer of any credit under clause (i)  
shall be treated as arising from the exer-  
cise of an essential government function.

“(C) CREDIT NOT INCOME.—Any transfer  
under subparagraph (B) of any credit to which  
subparagraph (A)(i) applies shall not be treated  
as income for purposes of section 501(c)(12).

“(D) TREATMENT OF UNRELATED PER-  
SONS.—For purposes of subsection (a)(2)(B),  
sales among and between persons described in  
subparagraph (A)(ii) shall be treated as sales  
between unrelated parties.”.

(2) CREDITS NOT REDUCED BY TAX-EXEMPT  
BONDS OR CERTAIN OTHER SUBSIDIES.—Section  
45(b)(3) (relating to credit reduced for grants, tax-  
exempt bonds, subsidized energy financing, and  
other credits) is amended—

(A) by striking clause (ii),

1 (B) by redesignating clauses (iii) and (iv)  
 2 as clauses (ii) and (iii),

3 (C) by inserting “(other than any loan,  
 4 debt, or other obligation incurred under sub-  
 5 chapter I of chapter 31 of title 7 of the Rural  
 6 Electrification Act of 1936 (7 U.S.C. 901 et  
 7 seq.), as in effect on the date of the enactment  
 8 of the Renewable Energy Incentives Act, or pro-  
 9 ceeds of an issue of State or local government  
 10 obligations the interest on which is exempt from  
 11 tax under section 103)” after “project” in  
 12 clause (ii) (as so redesignated), and

13 (D) by striking “**TAX-EXEMPT BONDS,**”  
 14 in the heading and inserting “**CERTAIN**”.

15 (3) CREDIT ALLOWABLE AGAINST MINIMUM  
 16 TAX WITHOUT LIMITATION.—Clause (ii) of section  
 17 38(c)(4)(B) (defining specified credits) is amended  
 18 to read as follows:

19 “(ii) the credit determined under sec-  
 20 tion 45 to the extent that such credit is at-  
 21 tributable to electricity or refined coal pro-  
 22 duced at a facility which is originally  
 23 placed in service after October 22, 2004.”.

24 (4) TREATMENT OF QUALIFIED FACILITIES NOT  
 25 IN COMPLIANCE WITH POLLUTION LAWS.—Section

1       45(d) (relating to qualified facilities), as amended by  
2       subsection (d)(3), is amended by adding at the end  
3       the following:

4           “(11)   NONCOMPLIANCE   WITH   POLLUTION  
5       LAWS.—For purposes of this subsection, a facility  
6       which is not in compliance with the applicable State  
7       and Federal pollution prevention, control, and per-  
8       mit requirements for any period of time shall not be  
9       considered to be a qualified facility during such pe-  
10      riod.”.

11      (i) EFFECTIVE DATE.—The amendments made by  
12      this section shall apply to electricity and other energy pro-  
13      duced and sold after the date of the enactment of this  
14      Act, in taxable years ending after such date.

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